

SEXUALLY ORIENTED BUSINESSES



From Scottsdale City Code

NOTICE

This booklet incorporates sections of the City Code of the City of Scottsdale as it relates to Sexually Oriented Businesses.

It is our hope that this booklet will assist you in understanding the licensing law.

For additional information or clarification, please call (480) 312-2400.

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CHAPTER 16

LICENSES, TAXATION, AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE VII. SEXUALLY ORIENTED BUSINESSES

Sec. 16-236. Findings.

Based on public testimony and other evidence before it, including information, studies and court decisions from other jurisdictions, the Scottsdale City Council makes the following legislative findings and statement of purpose:

The Council recognizes that some activities which occur in connection with sexually oriented businesses are protected as expression under the First Amendment to the United States Constitution. The Council further recognizes that First Amendment rights are among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights. The Council is aware, however, that sexually oriented businesses may and do generate secondary effects which are detrimental to the public health, safety, and welfare. Among these secondary effects are (a) prostitution and other sex related offenses (b) drug use and dealing (c) health risks through the spread of AIDS and other sexually transmitted diseases and (d) infiltration by organized crime for the purpose of drug and sex related business activities, laundering of money and other illicit conduct. This article is not intended to interfere with legitimate expression but to avoid and mitigate the secondary effects enumerated above. Specifically, Council finds that licensing of persons who operate and manage sexually oriented businesses and persons who provide adult services will further the goals of this article by enabling the City to ascertain if an applicant is underage or has engaged in criminal or other behavior of the sort this article is designed to limit. This information will enable the City to allocate law enforcement resources effectively and otherwise protect the community. The Council finds that limiting proximity and contact between adult service providers and patrons promotes the goal of reducing prostitution and other casual sexual conduct and the attendant risk of sexually transmitted diseases. The Council finds the foregoing to be true with respect to places where alcohol is served and where it is not.

Council finds that individual and interactive sexual activities in adult video facilities pose a risk of sexually transmitted disease, especially AIDS, and that the booth configuration options of this article will reduce that risk. The Council finds that the harmful secondary effects of sexually oriented businesses are more pronounced when conducted continuously or during late night hours. The fees established for licenses and permits in this article are based on the estimated cost of implementation, administration, and enforcement of the licensing program.

Sec. 16-237. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult service means dancing, service of food or beverages, modeling, posing, wrestling, singing, reading, talking or listening, or other performances or activities conducted for any consideration in an adult service business by a person who is nude during all or part of the time that the person is providing the service.

Adult service business means a business establishment or premises where any adult service is provided to patrons in the regular course of business and as one of its principal business purposes.

Adult service provider or **provider** means any person who provides an adult service.

Adult video facility means a commercial establishment where, for any consideration, films, motion pictures, video cassette projections, slides, or other visual media characterized by depiction of "specified sexual activities" or "specified anatomical areas" are shown in the regular course of business as a principal business purpose of the establishment. "Adult video facility" does not include a theater where all viewing occurs in a common area with seating for fifty (50) or more persons.

Booth means a partitioned area, in which coin or token operated video machines, projectors or other electronically or mechanically controlled devices are used in the regular course of business to produce still or moving picture images characterized by depiction of specified sexual activities or specified anatomical areas.

Cabaret means a sexually oriented business licensed to provide alcoholic beverages pursuant to a license described in A.R.S. § 4-209(B).

Director means the customer service director of the City of Scottsdale or the director's designee.

Employee means any person hired, engaged or authorized to perform any service on the premises of an adult service business, including an adult service provider, whether denominated as an employee, independent contractor or otherwise.

Enterprise means a corporation, association, labor union or other legal entity, as provided in A.R.S. § 13-105.

General manager means the general manager of financial services of the City of Scottsdale or the general manager's designee.

License means the license required by this article as a condition to conducting a sexually oriented business.

Licensee means a person or enterprise holding a sexually oriented business license issued under this article, including those persons required to provide information under section 16-240(c) of this article.

Manager's station means a permanently designated area marked accordingly within a sexually oriented business where a sexually oriented business manager is located in the normal course of operations.

Nude means without opaque non-flesh colored fabric fully covering the genitals, pubic hair, vulva, mons veneris, anus, cleft of the buttocks, the areola, and the part of the female breast directly below the areola.

Patron means a person invited or permitted to enter and remain upon the premises of a sexually oriented business, whether or not for a consideration.

Permit means the permit required by this article to engage in the activities of an adult service provider or sexually oriented business manager.

Sexually oriented business means an adult service business or an adult video facility.

Sexually oriented business manager or **manager** means a person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business.

Specified anatomical areas mean human genitals, pubic hair, vulva, mons veneris, anus, cleft of the buttocks, female breasts below the top of the areola or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means actual or simulated sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, flagellation, bestiality, fondling or touching of human genitals, pubic region, buttocks or the female breast, or any combination of the foregoing.

Sec. 16-238. Administration.

(a) The administration of this article, including the duty of prescribing forms, is vested in the general manager, except as otherwise specifically provided. The chief of police shall render such assistance in the administration and enforcement of this article as may be requested by the general manager or the director.

(b) License or permit applications made pursuant to this article shall be submitted to the director who shall grant, deny, suspend, or revoke licenses or permits in accordance with the provisions of this article.

(c) Licenses issued pursuant to this article shall be valid for a period of one (1) year from date of issuance.

(d) Permits issued pursuant to this article shall be valid for a period of three (3) years from date of issuance.

Sec. 16-239. Sexually Oriented Business License Required.

(a) A person or enterprise may not conduct a sexually oriented business without first obtaining a sexually oriented business license pursuant to this article. The license shall state the name of the license holder, the name, address and phone number of the licensed premises, and the dates of issuance and expiration of the license.

(b) A sexually oriented business for which a license has been issued pursuant to this article may conduct business only under the name or designation specified in the license.

(c) A licensee shall conduct business only at the address shown on the license. Each additional place of business shall require a separate license.

(d) A sexually oriented business license shall be displayed on the premises in such a manner as to be readily visible to patrons.

Sec. 16-240. Application for Sexually Oriented Business License.

(a) An applicant for a sexually oriented business license shall file in person at the office of the director an application, signed under oath by the applicant and notarized, accompanied by the fee required under section 16-255. An applicant or

other person whose fingerprints and photograph are required under paragraph (c) may, at his option, be photographed and fingerprinted at the office of the director or other city location not later than close of business on the first business day after filing of an application and payment of the required fees. An application shall be deemed complete when the director has received the required fees, all information required in subsection (c), photograph and fingerprints of the applicant and, in the case of a corporation or other business organization, photograph and fingerprints of all persons for whom information is required under subsection (c) of this section.

(b) Fingerprints and photograph, if not taken at the office of the director, shall be taken by a law enforcement agency and accompanied by a notarized verification by that agency.

(c) The application shall include the information called for in subsections (1) through (9). If the applicant is an enterprise, it shall designate an officer or partner as applicant. In such case, in addition to the information required in subparagraphs (1) through (9) for the applicant, the application shall include the state and date of formation of the organization and the information called for in subparagraphs (2) through (6) of this section with respect to each officer, director, general partner, and all other persons with authority to participate directly and regularly in management of the business, provided that, such information need not be provided with respect to attorneys, accountants and other persons whose primary function is to provide professional advice and assistance to the licensee.

- (1) The name, business location, business mailing address and phone number of the proposed sexually oriented business establishment.
- (2) The full true name and any other names, aliases or stage names used in the preceding five (5) years.
- (3) Current residential mailing address and telephone number.
- (4) Written proof of age, in the form of a birth certificate, current drivers license with picture, or other picture identification document issued by a governmental agency.
- (5) The issuing jurisdiction and the effective dates of any license or permit relating to a sexually oriented business or adult service, whether any such license or permit has been revoked or suspended, and, if so, the reason or reasons therefore.

- (6) All criminal charges, complaints or indictments in the preceding three (3) years which resulted in a conviction or a plea of guilty or no contest for an "organized crime and fraud" offense under chapter A.R.S. title 13, chapter 23, a "prostitution" offense under A.R.S. title 13, chapter 32, a "drug offense" under A.R.S. title 13, chapter 34 or a "sexual offense" under A.R.S. title 13, §§ 1401 through 1406 or under § 1412, or for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this subsection.

- (7) The name and address of the statutory agent or other agent authorized to receive service of process.
- (8) The name(s) of the sexually oriented business manager(s) who will have actual supervisory authority over the operations of the business.
- (9) An accurate, to scale, but not necessarily professionally drawn, floor plan of the business premises, and, in an application for an adult service business license, also clearly indicating the location of one or more manager's stations.

(d) The information provided pursuant to subparagraphs (5) and (6) of paragraph (c) of this section shall be supplemented in writing by certified mail to the director within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

Sec. 16-241. Sexually Oriented Business Manager Permit.

(a) A person may not serve as a sexually oriented business manager unless the person has first secured a sexually oriented business manager permit under this article.

(b) Application for a sexually oriented business manager permit shall be made in the same manner as application for a sexually oriented business license, except that the applicant need provide only the information called for in subparagraphs (2) through (6) of section 16-240(c).

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Sec. 16-242. Adult Service Provider Permit.

(a) A person may not work as an adult service provider unless the person has first obtained an adult service provider permit under this article.

(b) Application for an adult service provider permit shall be made in the same manner as application for a sexually oriented business license, except that the applicant need provide only the information called for in subsection (2) through (6) of section 16-240(c).

Sec. 16-243. Confidentiality.

The information provided by an applicant in connection with the application for a license or permit under this chapter shall be maintained by the director on a confidential basis, except that such information may be disclosed to other governmental agencies in connection with a law enforcement or public safety function.

Sec. 16-244. Grant or Denial of License or Permit.

(a) Within forty-five (45) days after receipt of an application for a sexually oriented business license, the director shall mail to the applicant a license or a notice of intent to deny. If the director fails to do so, the license shall be deemed granted.

(b) Upon receipt of an application for a sexually oriented business manager permit or an adult service provider permit, payment of the required fees and completion of photograph and fingerprinting requirements of this article, the director shall issue to the applicant a temporary permit. Within thirty (30) days after issuance of a temporary permit, the director shall mail to the applicant a regular permit or a notice of intent to deny.

(c) The issuance of any license or permit does not waive any right of revocation or denial the City may have at the time of issuance.

(d) The director shall grant the license or permanent permit to an applicant who has completed all requirements for application, unless the director finds any of the following conditions. For purposes of this paragraph, a person required to submit information pursuant to section 16-240(c) shall be deemed an applicant.

(1) The application is incomplete or contains a misrepresentation, false statement or omission.

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(2) The applicant has failed to comply with applicable zoning or other land use ordinances of the City relating to the business or activity to be carried out under the license or permit, or is delinquent in payment of any city taxes, fees or other payments due in connection with such business or activity.

(3) The applicant is not at least eighteen (18) years of age.

(4) The applicant, or other person required to provide information under section 16-240 (c), in the past three (3) years has been convicted, or plead guilty or no contest with respect to a felony violation or two misdemeanor violations of one or more offenses in the categories stated in section 16-240(c)(6).

(5) Within the past two (2) years, a license or permit under this article held by an applicant, or other person required to provide information pursuant to section 16-240 (c), has been revoked, or a similar

license in another jurisdiction has been revoked on the basis of conduct which would be a ground for revocation of a license or permit issued under this article if committed in the City.

Sec. 16-245. Non-transferability.

Licenses and permits issued under this article are nontransferable.

Sec. 16-246. Adult Service Provider or Manager Work Identification Card.

The director shall provide to all adult service providers and sexually oriented business managers a work identification card. The card shall contain a photograph of the permittee, the number of the permit issued to that permittee and the date of expiration of the permit.

Sec. 16-247. Adult Service Business; Operating Requirements.

(a) A person employed or acting as an adult service provider or manager shall have a valid permit issued pursuant to the provisions of this article. A permit or a certified copy thereof for each manager or provider shall be maintained on the premises in the custody of the manager at all times during which a person is serving as a provider or manager on the premises. Such permits shall be produced by the manager for inspection upon request by a law enforcement officer or other authorized city official.

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(b) An adult service business shall maintain a daily log of all persons providing adult services on the premises. The log shall cover the preceding twelve (12) month period and shall be available for inspection upon request by a law enforcement officer during regular business hours.

(c) A person below the age of eighteen (18) years may not observe or provide an adult service.

(d) A person may not provide an adult service in an adult service business except upon a stage elevated at least eighteen (18) inches above floor level. All parts of the stage, or a clearly designated area thereof within which the adult service is provided, shall be a distance of at least three (3) feet from all parts of a clearly designated area in which patrons may be present. The stage or designated area thereof shall be separated from the area in which patrons may be located by a barrier or railing the top of which is at least three (3) feet above floor level. A provider or patron may not extend any part of his or her body over or beyond the barrier or railing.

(e) An adult service provider, in the course of providing an adult service, may not perform a specified sexual activity.

(f) Adult services may not be provided between the hours of 1:30 a.m. and 6:00 a.m. or between 1:30 a.m. and 10:00 a.m. on Sunday.

(g) An adult service may not be provided in any location which is not visible by direct line of sight at all times from a manager's station located in a portion of the premises which is accessible to patrons of the adult service business.

(h) An adult service provider shall wear his or her adult service provider work identification card at all times while on the premises except while providing an adult service. The card shall be affixed to clothing on the front of the person and above waist level so that the picture and permit number are clearly visible to patrons.

(i) A sexually oriented business manager shall be on the premises of an adult service business at all times during which any adult service is provided on the premises. The manager shall wear his or her identification card in the manner described in subsection (h) above.

(j) An employee may not touch the breast, buttocks, or genitals of a patron, nor may a patron touch the breast, buttocks, or genitals of an employee.

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(k) A sign, in a form to be prescribed by the director summarizing the provisions of subparagraphs (c), (d), (j) and (l) of this section shall be posted near the entrance of an adult service business in such a manner as to be clearly visible to patrons upon entry.

(l) A patron may not place any money on the person or in or on the costume of an adult service provider while the adult service provider is nude.

(m) A manager or licensee may not knowingly permit or tolerate a violation of any provision of this section.

(n) With respect to a cabaret, the requirements of this section shall apply to the extent that they are not in conflict with specific statutory or valid regulatory requirements applicable to persons licensed to dispense alcoholic beverages.

Sec. 16-248. Adult Video Facility; Operating Requirements.

(a) An adult video facility shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle, as measured at the floor level.

(b) Each booth shall either: (a) be configured in such a way that allows persons patrolling the area outside the booth to observe from outside the booth the activities of any occupant in the interior of the booth, or (b) if not so configured, be equipped with a mirror or other device which allows persons patrolling the area outside the booth to observe from outside the booth the activities of any occupant in the interior of the booth.

(c) A sexually oriented business manager shall be on the premises of any adult video facility at all times that the facility is open for business. The manager shall wear his or her identification card in the manner described in section 16-247(h) above.

(d) A patron may not engage in specified sexual activities on the premises of an adult video facility.

(e) A booth or viewing area shall not have any hole or aperture in any wall separating that booth or viewing area from another.

(f) A manager or licensee may not knowingly permit or tolerate a violation of any provision of this section.

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Sec 16-249. Inspection of Premises and Records.

The manager shall permit law enforcement officers of the City to inspect the premises upon request during regular business hours.

Sec. 16-250. Suspension of License or Permit.

The director shall suspend a license or permit for a period of ten (10) days if the licensee or permittee is convicted of violating a provision of this article.

Sec. 16-251. Revocation of License or Permit.

The director shall revoke a license or permit issued pursuant to this article if the licensee or permittee:

- (1) Is convicted of three (3) or more violations of this article in any twelve-month period.
- (2) Is convicted or pleads guilty or no contest to an offense stated in subsection 16-240(c)(6).

Sec. 16-252. Procedure for Denial, Revocation or Suspension; Appeal.

If the director determines that grounds exist for denial, suspension, or revocation of a license or permit under this article, he shall notify the applicant, licensee or permittee (respondent) in writing of his intent to deny, suspend, or revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address on file with the director. Within ten (10) working days of receipt of such notice, the respondent may provide to the director in writing a response which shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked and may include a request for a hearing. If a response is not received by the director in the time stated, the notification shall be final administrative action of denial, suspension and revocation and notice of such will be sent to the permittee or licensee within five (5) working days after expiration of the period for submitting a response. Within five (5) working days after receipt of a response, the director shall either withdraw the intent to deny, suspend, or revoke, and send notification of the withdrawal to the respondent in writing by certified mail, or shall schedule a hearing before the general manager or his designee and shall send notification to the respondent in writing by certified mail of the date, time and place of

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the hearing. If the director fails to send a timely notification either withdrawing the intent or scheduling a hearing, the intent to deny, suspend or revoke shall be deemed withdrawn. The hearing, if requested, shall be scheduled not less than fifteen (15) nor more than twenty (20) working days after receipt by the director of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The general manager shall render a written decision within five (5) working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the director. If more than forty-five (45) days elapse between receipt by the director of a request for a hearing and mailing by the general manager of a final decision to the respondent a decision in favor of the applicant, licensee or permittee shall be deemed to have been rendered. In the case of an intent to revoke, suspend or nonrenew a license or permit, or to deny a regular permit, the permittee or licensee may continue to function under the license or permit pending receipt of the final decision of the general manager. The decision shall be final at the end of five (5) working days after it is mailed and shall constitute final administrative action.

Sec. 16-253. Judicial Appeal.

Final administrative action to deny, revoke, or nonrenew a license or permit may be appealed to the Superior Court by special action or other available procedure within thirty five (35) days after receipt of written notice of the decision. The City shall consent to expedited hearing and disposition. If a permittee or licensee pursues a judicial appeal from a final administrative action, that permittee or licensee may continue to function under the license or permit pending completion of judicial review.

Sec. 16-254. License and Permit Renewal.

(a) A license or permit may be renewed by filing an application for renewal in writing with the director. The application shall contain the information required to be submitted with an original application, including fingerprints and a photograph, provided that a renewal application need not contain any other information that has been provided in a previous application and has not changed since the time of the most recent application. An application for license renewal shall be received by the director not less than forty-five (45) days before the expiration of the license. An application for permit renewal shall be received by the director before expiration of the permit.

(b) The director may deny an application for renewal for the reasons and in accordance with the procedures set forth in section 16-244.

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Sec. 16-255. Fees.

(a) An original application for a sexually oriented business license shall be accompanied by a nonrefundable application fee in the amount of five hundred dollars (\$500.00) and by a license fee in the amount of five hundred dollars (\$500.00). The license fee will be refunded if the license is denied. An application for renewal shall be accompanied by the amount of the license fee.

(b) An application for issuance or renewal of an adult service provider permit shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00).

(c) An application for issuance or renewal of a sexually oriented business manager permit shall be accompanied by a nonrefundable fee of one hundred and fifty dollars (\$150.00).

(d) A duplicate or certified copy of a license, permit or identification card shall be issued by the director upon payment of a fee of ten dollars (\$10.00).

(e) A fee of twenty-five dollars (\$25.00) shall be paid at the time of fingerprinting for each set of fingerprints to be provided for by the director under section 16-240.

Sec. 16-256. Other Regulations.

A license or permit required by this article is in addition to any other licenses or permits required by the city, the county, or the state to engage in the business or occupation. Persons engaging in activities described in this article shall comply with all other ordinances and laws, including the city zoning ordinance, as may be required, to engage in a business or profession.

Sec. 16-257. Penalty.

(a) Violation of any requirement or prohibition stated in this article is a Class 1 Misdemeanor, punishable upon conviction by a fine of not more than twenty-five hundred dollars (\$2,500.00) or by imprisonment for not more than six (6) months. With respect to a violation that is continuous in nature, each day that the violation continues shall constitute a separate offense.

(b) A licensee which is an enterprise shall be subject to a fine of not more than twenty thousand dollars (\$20,000.00).

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(c) In addition to other penalties, a sexually oriented business which operates without a valid license shall constitute a public nuisance which may be abated by a suit for injunctive relief.

Sec. 16-258. Applicability.

This article shall apply to all persons engaging in the activities described herein, whether or not such activities were commenced prior to the effective date of this article. Persons so engaged as of the effective date of this article shall be in full compliance with this article, including receipt of any required license or permit, within one hundred eighty (180) days after the effective date of this article.

Sec. 16-259. Severability.

Each section and each provision or requirement of any section of this article shall be deemed severable and the invalidity of any portion of this article shall not affect the validity or enforceability of any other portion.

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